

Message Text

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PAGE 01 GENEVA 00296 181608Z
ACTION L-03

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C O N F I D E N T I A L GENEVA 296

STADIS////////////////////////////////

E.O. 11652: GDS
TAGS: SREF, UNHCR
SUBJ: DRAFT CONVENTION ON TERRITORIAL ASYLUM

REF: A. STATE 5400; B. STATE 10770

1. WE ARE DEEPLY CONCERNED OVER INS VIEWS AS EXPRESSED IN REFTEL, WHICH REPRESENT A FUNDAMENTAL SHIFT IN INS POSITION ON DRAFT CONVENTION ON TERRITORIAL ASYLUM. IN SEPTEMBER 1976 INS (COMMISSIONER CHAPMAN) CLEARED U.S. OBSERVATIONS TO UNSYG ON DRAFT CONVENTION (EXPERTS' TEXT) WHICH TOOK NO, REPEAT NO, ISSUE WITH ARTICLE 1 AND ITS OBLIGATION UPON CONTRACTING STATES TO USE BEST ENDEAVORS TO GRANT ASYLUM, AND WHICH CONTAINED NO SUGGESTED CHANGE IN ARTICLE 5. THESE USG COMMENTS ARE IN CIRCULATION HERE AS A CONFERENCE DOCUMENT. MOREOVER, COMMISSIONER CHAPMAN'S MEMORANDUM OF DECEMBER 22, 1976 GAVE CLEAR GO-AHEAD FOR U.S. TO PROPOSE THE REVISED VERSIONS OF ARTICLES 3(1) AND 4 WHICH, PER INSTRUCTIONS FROM DEPARTMENT, MISSION HAS COMMUNICATED TO 14 OTHER MISSIONS AND THE UNHCR. PROPOSED REVISION OF ARTICLE 3(1) GIVES CLEAR STATEMENT OF POLICY OF NON-REJECTION AT FRONTIER OF REFUGEES WHO OTHERWISE WOULD FACE PROSECUTION, AND
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 GENEVA 00296 181608Z

CANNOT ACCURATELY BE CHARACTERIZED AS BEING MERELY A "TECHNICAL PROPOSAL."

2. AS THE DEPARTMENT MUST RECOGNIZE, THE AMENDMENT TO ARTICLE 5 SOUGHT BY INS TO PROVIDE A SIGNATORY WITH "THE RIGHT UNILATERALLY TO REFUSE, SUSPEND OR LIMIT ADMISSIONS FOR ASYLUM" WOULD CONSTITUTE A FUNDAMENTAL REVISION IN

THE U.S. APPROACH TO THIS CONVENTION, AND WOULD BE AT DISTINCT VARIANCE WITH CONCEPT OF CONVENTION AS CONSIDERED BY INTERNATIONAL COMMUNITY TO DATE (I.E., BELLAGIO AND GROUP OF EXPERTS' TEXTS). WE BELIEVE THAT ANY ATTEMPT BY USDEL TO BRING ABOUT SUCH AN AMENDMENT WOULD BE ILL-DAVISED TACTICALLY AND WOULD BE SHARPLY COUNTER-PRODUCTIVE TO OUR FOREIGN POLICY OBJECTIVE OF SEEKING TO PROMOTE THE CONCEPT OF ASYLUM. WE ASSUME FROM REFERENCE B THE DEPARTMENT AGREES WITH THIS VIEW.

3. AS FOR INSERTION IN ARTICLE 5 OF THE WORDS "APPREHENDED OR" IT IS OUR INITIAL AND VERY TENTATIVE JUDGMENT THAT IT MIGHT BE POSSIBLE TO ARGUE SUCCESSFULLY FOR THIS. WE WOULD RECOMMEND AGAINST INTRODUCING THIS EXPANSION, HOWEVER, UNLESS IT FIRMLY RESOLVES THE PROBLEM IN THE U.S. POSITION, SINCE TO DO SO COULD AWAKEN UNFORESEEABLE NEW DIFFICULTIES IN THE CONFERENCE. COMMENT: FROM OUR READING OF THE LETTER FROM THE INS COMMISSIONER IT IS DIFFICULT FOR US TO SEE HOW THIS AMENDMENT WOULD MEET HIS POINT.

4. IN KEEPING WITH THE CONCEPT OF THE DRAFT CONVENTION, WHICH DOES NOT DISTINGUISH AMONG THE CIRCUMSTANCES (INDIVIDUAL OR MASS INFLUX) UNDER WHICH A PERSON MAY BE ELIGIBLE FOR ITS BENEFITS, BUT MERELY RECOGNIZES A POSSIBLE NEED FOR COOPERATION AMONG STATES IN CASES OF MASS INVLUX, THE U.S. HAS FLOATED WITH 14 MISSIONS AND UNHCR DRAFT LANGUAGE FOR ARTICLES 3(1) AND 4 WHICH EXPRESSES NO QUALIFICATION ON THIS POINT.
CONFIDENTIAL

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PAGE 03 GENEVA 00296 181608Z

5. WE FIND OURSELVES, THEREFORE, IN A POSTURE WHICH IS NOT ONLY AWKWARD FOR THE DELEGATION BUT MISLEADING. THE RECIPIENTS OF OUR PROPOSALS ARE PRESSING TO CONSULT MORE CLOSELY ABOUT THESE PROVISIONS, AND WE FEEL AN OBLIGATION TO BEGIN THIS PROCESS OR COME CLEAN ABOUT THE DIFFICULTY WE HAVE. IN THE LATTER CASE THERE IS RISK OF MISUNDERSTANDING, ATTACH AND ATTENDANT ADVERSE PUBLICITY (GIVEN THE NGO AND PRESS ATTENTION TO THIS CONFERENCE). THE BEST HOPE FOR MINIMIZING THESE CONSEQUENCES WILL BE TO BEGIN POSUTRING OURSELVES NOW ON THIS PROBLEM, DROPPING OUT OF ANY LEADERSHIP ROLE, WHILE WORKING QUIETLY TO PRESERVE THE MAIN OBJECTIVE OF BRINGING A SOUND CONVENTION INTO BEING. HOWEVER, IT MUST BE RECOGNIZED THAT OUR ABILITY TO INFLUENCE OTHERS TOWARD THE ADOPTION OF A SOUND CONVENTION WILL BE SEVERELY REDUCED IF NOT NEGATED ENTIRELY IF U.S. POSITION ON ASYLUM TAKES ON NEGATIVE ASPECT. THIS WOULD BE AN ESPECIALLY UNFORTUNATE DEVELOPMENT IN LIGHT OF

CONCERTED EFFORT BY COMMUNIST COUNTRIES (PREVIOUSLY REPORTED), TO THWART ANY PRODUCTIVE OUTCOME OF THE CONFERENCE.

6. ACTION REQUESTED: CHAIR, WITH APPROVAL OF COMMITTEE, HAS JUST FIXED SIX P.M. JANUARY 19 AS FINAL DEADLINE FOR SUBMISSION IN WRITING OF AMENDMENTS TO ARTICLES 3 AND 4. WE MUST HAVE GUIDANCE, THEREFORE, BY NOON JANUARY 19 AS TO WHETHER U.S. SHOULD SUBMIT FORMALLY AMENDMENTS TO ARTICLES 3 AND 4.CATTO

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